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**GENERAL COMMENT NO. 19<sup>1</sup>**

**The right to social security (art. 9)**

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<sup>1</sup> Adopted on 23 November 2007.

## I. INTRODUCTION

1. Article 9 of the International Covenant on Economic, Social and Cultural Rights (the Covenant) provides that, ‘The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.’ The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.
2. The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.
3. Social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.
4. In accordance with article 2 (1), States parties to the Covenant must take effective measures, and periodically revise them when necessary, within their maximum available resources, to fully realize the right of all persons without any discrimination to social security, including social insurance. The wording of article 9 of the Covenant indicates that the measures that are to be used to provide social security benefits cannot be defined narrowly and, in any event, must guarantee all peoples a minimum enjoyment of this human right. These measures can include:
  - (a) Contributory or insurance-based schemes such as social insurance, which is expressly mentioned in article 9. These generally involve compulsory contributions from beneficiaries, employers and, sometimes, the State, in conjunction with the payment of benefits and administrative expenses from a common fund;
  - (b) Non-contributory schemes such as universal schemes (which provide the relevant benefit in principle to everyone who experiences a particular risk or contingency) or targeted social assistance schemes (where benefits are received by those in a situation of need). In almost all States parties, non-contributory schemes will be required since it is unlikely that every person can be adequately covered through an insurance-based system.
5. Other forms of social security are also acceptable, including (a) privately run schemes, and (b) self-help or other measures, such as community-based or mutual schemes. Whichever system is chosen, it must conform to the essential elements of the right to social security and to that extent should be viewed as contributing to the right to social security and be protected by States parties in accordance with this general comment.
6. The right to social security has been strongly affirmed in international law. The human rights dimensions of social security were clearly present in the Declaration of Philadelphia of 1944 which called for the “extension of social security measures to provide a

basic income to all in need of such protection and comprehensive medical care”.<sup>2</sup> Social security was recognized as a human right in the Universal Declaration of Human Rights of 1948, which states in article 22 that “Everyone, as a member of society, has the right to social security” and in article 25(1) that everyone has the “right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”. The right was subsequently incorporated in a range of international human rights treaties<sup>3</sup> and regional human rights treaties.<sup>4</sup> In 2001, the International Labour Conference, composed of representatives of States, employers, and workers, affirmed that social security “is a basic human right and a fundamental means for creating social cohesion”.<sup>5</sup>

7. The Committee on Economic, Social and Cultural Rights (the Committee) is concerned over the very low levels of access to social security with a large majority (about 80 per cent) of the global population currently lacking access to formal social security. Among these 80 per cent, 20 per cent live in extreme poverty.<sup>6</sup>

8. During its monitoring of the implementation of the Covenant, the Committee has consistently expressed its concern over the denial of or lack of access to adequate social security, which has undermined the realization of many Covenant rights. The Committee has also consistently addressed the right to social security, not only during its consideration of the reports of States parties but also in its general comments and various statements.<sup>7</sup> With a view to

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<sup>2</sup> Declaration concerning the aims and purposes of the International Labour Organization (ILO), annex to the Constitution of the ILO, section III (f).

<sup>3</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), article 5 (e) (iv); Convention on the Elimination of All Forms of Discrimination against Women, articles 11, para. 1 (e) and 14, para. 2 (c); and Convention on the Rights of the Child, article 26.

<sup>4</sup> For explicit mention of the right to social security, see American Declaration of the Rights and Duties of Man, article XVI; Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights (Protocol of San Salvador), article 9; European Social Charter (and 1996 revised version), articles 12, 13 and 14.

<sup>5</sup> International Labour Conference, 89th session, report of the Committee on Social Security, resolutions and conclusions concerning social security.

<sup>6</sup> Michael Cichon and Krzysztof Hagemeyer, “Social Security for All: Investing in Global and Economic Development. A Consultation”, *Issues in Social Protection Series, Discussion Paper 16*, ILO Social Security Department, Geneva, 2006.

<sup>7</sup> See general comments No. 5 (1994) on persons with disabilities; No. 6 (1995) on the economic, social and cultural rights of older persons; No. 12 (1999) on the right to adequate food (art. 11); No. 14 (2000) on the right to the highest attainable standard of health (art. 12); No. 15 (2002) on the right to water (arts. 11 and 12); No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3); and No. 18 (2005) on the right to work (art. 6). See also Statement by the Committee: An evaluation of the obligation

assisting the implementation by States parties of the Covenant and the fulfilment of their reporting obligations, this general comment focuses on the normative content of the right to social security (chapter II), on States parties' obligations (chapter III), on violations (chapter IV) and on implementation at the national level (chapter V), while the obligations of actors other than States parties are addressed in chapter VI.

## **II. NORMATIVE CONTENT OF THE RIGHT TO SOCIAL SECURITY**

9. The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies.

### **A. Elements of the right to social security**

10. While the elements of the right to social security may vary according to different conditions, a number of essential factors apply in all circumstances as set out below. In interpreting these aspects, it should be borne in mind that social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy.

#### **1. Availability - social security system**

11. The right to social security requires, for its implementation, that a system, whether composed of a single scheme or variety of schemes, is available and in place to ensure that benefits are provided for the relevant social risks and contingencies. The system should be established under domestic law, and public authorities must take responsibility for the effective administration or supervision of the system. The schemes should also be sustainable, including those concerning provision of pensions, in order to ensure that the right can be realized for present and future generations.

#### **2. Social risks and contingencies**

12. The social security system should provide for the coverage of the following nine principal branches of social security.<sup>8</sup>

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to take steps to the “maximum of available resources” under an optional protocol to the Covenant (E/C.12/2007/1).

<sup>8</sup> See in particular ILO Convention No. 102 (1952) on Social Security (Minimum Standards), which was confirmed by the ILO Governing Body in 2002 as an instrument corresponding to contemporary needs and circumstances. These categories were also affirmed by States and trade union and employer representatives in the ILO Maritime Labour Convention (2006), regulation 4.5, standard A4.5. The Committee’s revised general guidelines for State reporting of 1991 follow this approach. See also Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), arts. 11, 12 and 13.

**(a) Health care**

13. States parties have an obligation to guarantee that health systems are established to provide adequate access to health services for all.<sup>9</sup> In cases in which the health system foresees private or mixed plans, such plans should be affordable, in conformity with the essential elements enunciated in the present general comment.<sup>10</sup> The Committee notes the particular importance of the right to social security in the context of endemic diseases such as HIV/AIDS, tuberculosis and malaria, and the need to provide access to preventive and curative measures.

**(b) Sickness**

14. Cash benefits should be provided to those incapable of working due to ill-health to cover periods of loss of earnings. Persons suffering from long periods of sickness should qualify for disability benefits.

**(c) Old age**

15. States parties should take appropriate measures to establish social security schemes that provide benefits to older persons, starting at a specific age, to be prescribed by national law.<sup>11</sup> The Committee stresses that States parties should establish a retirement age that is appropriate to national circumstances which take account of, inter alia, the nature of the occupation, in particular work in hazardous occupations and the working ability of older persons. States parties should, within the limits of available resources, provide non-contributory old-age benefits, social services and other assistance for all older persons who, when reaching the retirement age prescribed in national legislation, have not completed a qualifying period of contributions or are not otherwise entitled to an old-age insurance-based pension or other social security benefit or assistance, and have no other source of income.

**(d) Unemployment**

16. In addition to promoting full, productive and freely chosen employment, States parties must endeavor to provide benefits to cover the loss or lack of earnings due to the inability to obtain or maintain suitable employment. In the case of loss of employment, benefits should be paid for an adequate period of time and at the expiry of the period, the social security system should ensure adequate protection of the unemployed worker, for example through social assistance. The social security system should also cover other workers, including part-time workers, casual workers, seasonal workers, and the self-employed, and those working in atypical

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<sup>9</sup> General comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12). Coverage must include any morbid condition, whatever its cause, and pregnancy and confinement and their consequences, general and practical medical care, together with hospitalization.

<sup>10</sup> See above, para. 4 and see below paras. 23-27.

<sup>11</sup> See general comment No. 6 (1995) on the economic, social and cultural rights of older persons.

forms of work in the informal economy.<sup>12</sup> Benefits should be provided to cover periods of loss of earnings by persons who are requested not to report for work during a public health or other emergency.

**(e) Employment injury**

17. States parties should also ensure the protection of workers who are injured in the course of employment or other productive work. The social security system should cover the costs and loss of earnings from the injury or morbid condition and the loss of support for spouses or dependents suffered as the result of the death of a breadwinner.<sup>13</sup> Adequate benefits should be provided in the form of access to health care and cash benefits to ensure income security. Entitlement to benefits should not be made subject to the length of employment, to the duration of insurance or to the payment of contributions.

**(f) Family and child support**

18. Benefits for families are crucial for realizing the rights of children and adult dependents to protection under articles 9 and 10 of the Covenant. In providing the benefits, the State party should take into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child or adult dependent, as well as any other consideration relevant to an application for benefits made by or on behalf of the child or adult dependent.<sup>14</sup> Family and child benefits, including cash benefits and social services, should be provided to families, without discrimination on prohibited grounds, and would ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate.

**(g) Maternity**

19. Article 10 of the Covenant expressly provides that “working mothers should be accorded paid leave or leave with adequate social security benefits”.<sup>15</sup> Paid maternity leave should be granted to all women, including those involved in atypical work, and benefits should be provided for an adequate period.<sup>16</sup> Appropriate medical benefits should be provided for women and children, including perinatal, childbirth and postnatal care and care in hospital where necessary.

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<sup>12</sup> As defined in paras. 29-39 below.

<sup>13</sup> See ILO Convention No. 121 (1964) on Employment Injury Benefits.

<sup>14</sup> See Convention on the Rights of the Child, article 26.

<sup>15</sup> The Committee notes that ILO Convention No. 183 (2000) on Maternity Protection provides that maternity leave should be for a period of not less than 14 weeks, including a period of six weeks' compulsory leave after childbirth.

<sup>16</sup> See CEDAW, article.11, para. 2 (b).

**(h) Disability**

20. In its general comment No. 5 ((1994) on persons with disabilities, the Committee emphasized the importance of providing adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost, or received a reduction in, their income, have been denied employment opportunities or have a permanent disability. Such support should be provided in a dignified manner<sup>17</sup> and reflect the special needs for assistance and other expenses often associated with disability. The support provided should cover family members and other informal carers.

**(i) Survivors and orphans**

21. States parties must also ensure the provision of benefits to survivors and orphans on the death of a breadwinner who was covered by social security or had rights to a pension.<sup>18</sup> Benefits should cover funeral costs, particularly in those States parties where funeral expenses are prohibitive. Survivors or orphans must not be excluded from social security schemes on the basis of prohibited grounds of discrimination and they should be given assistance in accessing social security schemes, particularly when endemic diseases, such as HIV/AIDS, tuberculosis and malaria, leave large numbers of children or older persons without family and community support.

**3. Adequacy**

22. Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant. States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to avoid any adverse effect on the levels of benefits and the form in which they are provided. Methods applied should ensure the adequacy of benefits. The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights. When a person makes contributions to a social security scheme that provides benefits to cover lack of income, there should be a reasonable relationship between earnings, paid contributions, and the amount of relevant benefit.

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<sup>17</sup> Institutionalization of persons with disabilities, unless rendered necessary for other reasons, cannot be regarded as an adequate substitute for the social security and income-support rights of such persons, as well as rehabilitation and employment support, in order to assist persons with disabilities to secure work as required by articles 6 and 7 of the Covenant.

<sup>18</sup> The Committee also notes that children have a right to social security. See Convention on the Rights of the Child, article 26.

#### **4. Accessibility**

##### **(a) Coverage**

23. All persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination on any of the grounds prohibited under article 2, paragraph 2, of the Covenant. In order to ensure universal coverage, non-contributory schemes will be necessary.

##### **(b) Eligibility**

24. Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.<sup>19</sup>

##### **(c) Affordability**

25. If a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realization of other Covenant rights.

##### **(d) Participation and information**

26. Beneficiaries of social security schemes must be able to participate in the administration of the social security system.<sup>20</sup> The system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.

##### **(e) Physical access**

27. Benefits should be provided in a timely manner and beneficiaries should have physical access to the social security services in order to access benefits and information, and make contributions where relevant. Particular attention should be paid in this regard to persons with

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<sup>19</sup> The Committee notes that, under ILO Convention No. 168 (1988) on Employment Promotion and Protection against Unemployment, such action can only be taken in certain circumstances: absence from the territory of the State; a competent authority has determined that the person concerned deliberately contributed to their own dismissal or left employment voluntarily without just cause; during the period a person stops work due to a labour dispute; the person has attempted to obtain or has obtained benefits fraudulently; the person has failed without just cause to use the facilities available for placement, vocational guidance, training, retraining or redeployment in suitable work; or the person is in receipt of another income maintenance benefit provided for in the legislation of the relevant State, except a family benefit, provided that the part of the benefit which is suspended does not exceed that other benefit.

<sup>20</sup> Articles 71 and 72 of ILO Convention 102 (1952) on Social Security (Minimum Standards) set out similar requirements.

disabilities, migrants, and persons living in remote or disaster-prone areas, as well as areas experiencing armed conflict, so that they, too, can have access to these services.

## 5. Relationship with other rights

28. The right to social security plays an important role in supporting the realization of many of the rights in the Covenant, but other measures are necessary to complement the right to social security. For example, States parties should provide social services for rehabilitation of the injured and persons with disabilities in accordance with article 6 of the Covenant, provide child care and welfare, advice and assistance with family planning and the provision of special facilities for persons with disabilities and older persons (article 10); take measures to combat poverty and social exclusion and provide supporting social services (article 11); and adopt measures to prevent disease and improve health facilities, goods and services (article 12).<sup>21</sup> States parties should also consider schemes that provide social protection to individuals belonging to disadvantaged and marginalized groups, for example crop or natural disaster insurance for small farmers<sup>22</sup> or livelihood protection for self-employed persons in the informal economy. However, the adoption of measures to realize other rights in the Covenant will not in itself act as a substitute for the creation of social security schemes.

### B. Special topics of broad application

#### 1. Non-discrimination and equality

29. The obligation of States parties to guarantee that the right to social security is enjoyed without discrimination (article 2, paragraph 2, of the Covenant), and equally between men and women (article 3), pervades all of the obligations under Part III of the Covenant. The Covenant thus prohibits any discrimination, whether in law or in fact, whether direct or indirect, on the grounds of race, colour, sex,<sup>23</sup> age,<sup>24</sup> language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability,<sup>25</sup> health status (including HIV/AIDS),

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<sup>21</sup> See [Social Security principles](#), *Social Security Series No. 1*, ILO (1998), p. 14 and general comments No. 5 (1994) on persons with disabilities, No. 6 (1995) on the economic, social and cultural rights of older persons; No. 12 (1999) on the right to adequate food (art. 11); No. 13 (1999) on the right to education (art. 13); No. 14 (2000) on the right to the highest attainable standard of health (art. 12); No. 15 (2002) on the right to water (arts. 11 and 12); and No. 18 (2005) on the right to work (art. 6).

<sup>22</sup> [Social Security principles](#), *Social Security Series No. 1*, ILO, p. 29.

<sup>23</sup> See general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3).

<sup>24</sup> See general comment No. 6. The Committee notes that some distinctions can be made on the basis of age, for example entitlement to a pension. The key underlying principle is that any distinction on prohibited grounds must be reasonable and justified in the circumstances.

<sup>25</sup> See general comment No. 5.

sexual orientation, and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security.

30. States parties should also remove de facto discrimination on prohibited grounds, where individuals are unable to access adequate social security. States parties should ensure that legislation, policies, programmes and the allocation of resources facilitate access to social security for all members of society in accordance with Part III. Restrictions on access to social security schemes should also be reviewed to ensure that they do not discriminate in law or in fact.

31. Whereas everyone has the right to social security, States parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed, workers inadequately protected by social security, persons working in the informal economy, sick or injured workers, people with disabilities, older persons, children and adult dependents, domestic workers, homeworkers,<sup>26</sup> minority groups, refugees, asylum-seekers, internally displaced persons, returnees, non-nationals, prisoners and detainees.

## **2. Gender equality**

32. In general comment No.16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3), the Committee noted that implementation of article 3 in relation to article 9 requires, inter alia, equalization of the compulsory retirement age for both men and women; ensuring that women receive equal benefits in both public and private pension schemes; and guaranteeing adequate maternity leave for women, paternity leave for men, and parental leave for both men and women.<sup>27</sup> In social security schemes that link benefits with contributions, States parties should take steps to eliminate the factors that prevent women from making equal contributions to such schemes (for example, intermittent participation in the workforce on account of family responsibilities and unequal wage outcomes) or ensure that schemes take account of such factors in the design of benefit formulas (for example by considering child rearing periods or periods to take care of adult dependents in relation to pension entitlements). Differences in the average life expectancy of men and women can also lead directly or indirectly to discrimination in provision of benefits (particularly in the case of pensions) and thus need to be taken into account in the design of schemes. Non-contributory schemes must also take account of the fact that women are more likely to live in poverty than men and often have sole responsibility for the care of children.

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<sup>26</sup> Home workers are those who work from home for remuneration for an employer or similar business enterprise or activity. See ILO Convention No. 177 (1996) on Home Work.

<sup>27</sup> Article 10 of the Covenant expressly provides that “working mothers should be accorded paid leave or leave with adequate social security benefits”.

### **3. Workers inadequately protected by social security (part-time, casual, self-employed and homeworkers)**

33. Steps must be taken by States parties to the maximum of their available resources to ensure that the social security systems cover workers inadequately protected by social security, including part-time workers, casual workers, the self-employed and homeworkers. Where social security schemes for such workers are based on occupational activity, they should be adapted so that they enjoy conditions equivalent to those of comparable full-time workers. Except in the case of employment injury, these conditions could be determined in proportion to hours of work, contributions or earnings, or through other appropriate methods. Where such occupation-based schemes do not provide adequate coverage to these workers, a State party will need to adopt complementary measures.

### **4. Informal economy**

34. States parties must take steps to the maximum of their available resources to ensure that the social security systems cover those persons working in the informal economy. The informal economy has been defined by the International Labour Conference as “all economic activities by workers and economic units that are - in law or in practice - not covered or insufficiently covered by formal arrangements.”<sup>28</sup> This duty is particularly important where social security systems are based on a formal employment relationship, business unit or registered residence. Measures could include: (a) removing obstacles that prevent such persons from accessing informal social security schemes, such as community-based insurance; (b) ensuring a minimum level of coverage of risks and contingencies with progressive expansion over time; and (c) respecting and supporting social security schemes developed within the informal economy such as micro-insurance and other microcredit related schemes. The Committee notes that in a number of States parties with a large informal economy, programmes such as universal pension and health-care schemes that cover all persons have been adopted.

### **5. Indigenous Peoples and Minority Groups**

35. States parties should take particular care that indigenous peoples and ethnic and linguistic minorities are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information.

### **6. Non-nationals (including migrant workers, refugees, asylum-seekers and stateless persons)**

36. Article 2, paragraph 2, prohibits discrimination on grounds of nationality and the Committee notes that the Covenant contains no express jurisdictional limitation. Where non-nationals, including migrant workers, have contributed to a social security scheme, they should

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<sup>28</sup> Conclusions concerning decent work and the informal economy, General Conference of the International Labour Organization, 90th session, para. 3.

be able to benefit from that contribution or retrieve their contributions if they leave the country.<sup>29</sup> A migrant worker's entitlement should also not be affected by a change in workplace.

37. Non-nationals should be able to access non-contributory schemes for income support, affordable access to health care and family support. Any restrictions, including a qualification period, must be proportionate and reasonable. All persons, irrespective of their nationality, residency or immigration status, are entitled to primary and emergency medical care.

38. Refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups, should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards.<sup>30</sup>

## **7. Internally displaced persons and internal migrants**

39. Internally displaced persons should not suffer from any discrimination in the enjoyment of their right to social security and States parties should take proactive measures to ensure equal access to schemes, for example by waiving, where applicable, residence requirements and making allowance for provision of benefits or other related services at the place of displacement. Internal migrants should be able to access social security from their place of residence, and residence registration systems should not restrict access to social security for individuals who move to another district where they are not registered.

### **III. OBLIGATIONS OF STATES PARTIES**

#### **A. General legal obligations**

40. While the Covenant provides for progressive realization and acknowledges the constraints owing to the limits of available resources, the Covenant also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to social security, such as the guarantee that the right will be exercised without discrimination of any kind (article 2, paragraph 2), ensuring the equal rights of men and women (article 3), and the obligation to take steps (article 2, paragraph 1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to social security.

41. The Committee acknowledges that the realization of the right to social security carries significant financial implications for States parties, but notes that the fundamental importance of social security for human dignity and the legal recognition of this right by States parties mean that the right should be given appropriate priority in law and policy. States parties should develop a national strategy for the full implementation of the right to social security, and should

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<sup>29</sup> See report of the Secretary-General on international migration and development (A/60/871), para. 98.

<sup>30</sup> See Convention relating to the Status of Refugees, articles 23 and 24 and Convention relating to the Status of Stateless Persons, articles 23 and 24.

allocate adequate fiscal and other resources at the national level. If necessary, they should avail themselves of international cooperation and technical assistance in line with article 2, paragraph 1, of the Covenant.

42. There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.

### **B. Specific legal obligations**

43. The right to social security, like any human right, imposes three types of obligations on States parties: the obligation to respect, the obligation to protect and the obligation to fulfil.

#### **1. Obligation to respect**

44. The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to social security. The obligation includes, inter alia, refraining from engaging in any practice or activity that, for example, denies or limits equal access to adequate social security; arbitrarily or unreasonably interferes with self-help or customary or traditional arrangements for social security; arbitrarily or unreasonably interferes with institutions that have been established by individuals or corporate bodies to provide social security.

#### **2. Obligation to protect**

45. The obligation to protect requires that State parties prevent third parties from interfering in any way with the enjoyment of the right to social security. Third parties include individuals, groups, corporations and other entities, as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures, for example, to restrain third parties from denying equal access to social security schemes operated by them or by others and imposing unreasonable eligibility conditions; arbitrarily or unreasonably interfering with self-help or customary or traditional arrangements for social security that are consistent with the right to social security; and failing to pay legally required contributions for employees or other beneficiaries into the social security system.

46. Where social security schemes, whether contributory or non-contributory, are operated or controlled by third parties, States parties retain the responsibility of administering the national social security system and ensuring that private actors do not compromise equal, adequate,

affordable, and accessible social security. To prevent such abuses an effective regulatory system must be established which includes framework legislation, independent monitoring, genuine public participation and imposition of penalties for non-compliance.

### **3. Obligation to fulfil**

47. The obligation to fulfil requires States parties to adopt the necessary measures, including the implementation of a social security scheme, directed towards the full realization of the right to social security. The obligation to fulfil can be subdivided into the obligations to facilitate, promote and provide.

48. The obligation to facilitate requires States parties to take positive measures to assist individuals and communities to enjoy the right to social security. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national social security strategy and plan of action to realize this right;<sup>31</sup> ensuring that the social security system will be adequate, accessible for everyone and will cover social risks and contingencies.<sup>32</sup>

49. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education and public awareness concerning access to social security schemes, particularly in rural and deprived urban areas, or amongst linguistic and other minorities.

50. States parties are also obliged to provide the right to social security when individuals or a group are unable, on grounds reasonably considered to be beyond their control, to realize that right themselves, within the existing social security system with the means at their disposal. States parties will need to establish non-contributory schemes or other social assistance measures to provide support to those individuals and groups who are unable to make sufficient contributions for their own protection. Special attention should be given to ensuring that the social security system can respond in times of emergency, for example during and after natural disasters, armed conflict and crop failure.

51. It is important that social security schemes cover disadvantaged and marginalized groups, even where there is limited capacity to finance social security, either from tax revenues and/or contributions from beneficiaries. Low-cost and alternative schemes could be developed to cover immediately those without access to social security, although the aim should be to integrate them into regular social security schemes. Policies and a legislative framework could be adopted for the progressive inclusion of those in the informal economy or who are otherwise excluded from access to social security.

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<sup>31</sup> See paras. 59 (d) and 68-70 below.

<sup>32</sup> See paras. 12-21 above.

#### 4. International obligations

52. Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the rights inscribed in the Covenant, including the right to social security.

53. To comply with their international obligations in relation to the right to social security, States parties have to respect the enjoyment of the right by refraining from actions that interfere, directly or indirectly, with the enjoyment of the right to social security in other countries.

54. States parties should extraterritorially protect the right to social security by preventing their own citizens and national entities from violating this right in other countries. Where States parties can take steps to influence third parties (non-State actors) within their jurisdiction to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.

55. Depending on the availability of resources, States parties should facilitate the realization of the right to social security in other countries, for example through provision of economic and technical assistance. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. Economically developed States parties have a special responsibility for and interest in assisting the developing countries in this regard.

56. States parties should ensure that the right to social security is given due attention in international agreements and, to that end, should consider the development of further legal instruments. The Committee notes the importance of establishing reciprocal bilateral and multilateral international agreements or other instruments for coordinating or harmonizing contributory social security schemes for migrant workers.<sup>33</sup> Persons temporarily working in another country should be covered by the social security scheme of their home country.

57. With regard to the conclusion and implementation of international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to social security. Agreements concerning trade liberalization should not restrict the capacity of a State Party to ensure the full realization of the right to social security.

58. States parties should ensure that their actions as members of international organizations take due account of the right to social security. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to social security is taken into account in their lending policies, credit agreements and other international measures. States parties should ensure that the policies and practices of international and regional financial

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<sup>33</sup> See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 27.

institutions, in particular those concerning their role in structural adjustment and in the design and implementation of social security systems, promote and do not interfere with the right to social security.

## 5. Core obligations

59. States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant.<sup>34</sup> This requires the State party:

(a) To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care,<sup>35</sup> basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. If a State party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the State party, after a wide process of consultation, select a core group of social risks and contingencies;

(b) To ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups;<sup>36</sup>

(c) To respect existing social security schemes and protect them from unreasonable interference;<sup>37</sup>

(d) To adopt and implement a national social security strategy and plan of action;<sup>38</sup>

(e) To take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups;<sup>39</sup>

(f) To monitor the extent of the realization of the right to social security.<sup>40</sup>

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<sup>34</sup> See general comment No. 3 (1990) on the nature of States parties' obligations (art.2, para.1 of the Covenant).

<sup>35</sup> Read in conjunction with general comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12), paras. 43 and 44, this would include access to health facilities, goods and services on a non-discriminatory basis, provision of essential drugs, access to reproductive, maternal (prenatal as well as post-natal) and child health care, and immunization against the major infectious diseases occurring in the community.

<sup>36</sup> See paras. 29-31 above.

<sup>37</sup> See paras. 44-46 above.

<sup>38</sup> See paras. 68-70 below.

<sup>39</sup> See for example paras. 31-39 above.

60. In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, these minimum obligations.<sup>41</sup>

61. The Committee also wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical, to enable developing countries to fulfil their core obligations.

#### IV. VIOLATIONS

62. To demonstrate compliance with their general and specific obligations, States parties must show that they have taken the necessary steps towards the realization of the right to social security within their maximum available resources, and have guaranteed that the right is enjoyed without discrimination and equally by men and women (articles 2 and 3 of the Covenant). Under international law, a failure to act in good faith to take such steps amounts to a violation of the Covenant.<sup>42</sup>

63. In assessing whether States parties have complied with obligations to take action, the Committee looks at whether implementation is reasonable or proportionate with respect to the attainment of the relevant rights, complies with human rights and democratic principles and whether it is subject to an adequate framework of monitoring and accountability.

64. Violations of the right to social security can occur through acts of commission, i.e. the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of deliberately retrogressive measures incompatible with the core obligations outlined in paragraph 42 above; the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to social security; active support for measures adopted by third parties which are inconsistent with the right to social security; the establishment of different eligibility conditions for social assistance benefits for disadvantaged and marginalized individuals depending on the place of residence; active denial of the rights of women or particular individuals or groups.

65. Violations through acts of omission can occur when the State party fails to take sufficient and appropriate action to realize the right to social security. In the context of social security, examples of such violations include the failure to take appropriate steps towards the full realization of everyone's right to social security; the failure to enforce relevant laws or put into effect policies designed to implement the right to social security; the failure to ensure the financial sustainability of State pension schemes; the failure to reform or repeal legislation which is manifestly inconsistent with the right to social security; the failure to regulate the activities of

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<sup>40</sup> See para. 74 below.

<sup>41</sup> See general comment No. 3, paragraph 10.

<sup>42</sup> See Vienna Convention on the Law of Treaties, article 26.

individuals or groups so as to prevent them from violating the right to social security; the failure to remove promptly obstacles which the State party is under a duty to remove in order to permit the immediate fulfilment of a right guaranteed by the Covenant; the failure to meet the core obligations (see paragraph 59 above); the failure of a State party to take into account its Covenant obligations when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.

## V. IMPLEMENTATION AT THE NATIONAL LEVEL

66. In the implementation of their Covenant obligations, and in accordance with article 2, paragraph 1, of the Covenant, States parties are required to utilize “all appropriate means, including particularly the adoption of legislative measures.” Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances.<sup>43</sup> The Covenant, however, clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the right to social security, as soon as possible.

### A. Legislation, strategies and policies

67. States parties are obliged to adopt all appropriate measures such as legislation, strategies, policies and programmes to ensure that the specific obligations with regard to the right to social security will be implemented. Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to social security, and should be repealed, amended or changed if inconsistent with Covenant requirements. Social security systems should also regularly be monitored to ensure their sustainability.

68. The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy and plan of action to realize the right to social security, unless the State party can clearly show that it has a comprehensive social security system in place and that it reviews it regularly to ensure that it is consistent with the right to social security. The strategy and action plan should be reasonably conceived in the circumstances; take into account the equal rights of men and women and the rights of the most disadvantaged and marginalized groups; be based upon human rights law and principles; cover all aspects of the right to social security; set targets or goals to be achieved and the time-frame for their achievement, together with corresponding benchmarks and indicators, against which they should be continuously monitored; and contain mechanisms for obtaining financial and human resources. When formulating and implementing national strategies on the right to social security, States parties should avail themselves, if necessary, of the technical assistance and cooperation of the United Nations specialized agencies (see Part VI below).

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<sup>43</sup> See statement by the Committee: An evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the Covenant (E/C.12/2007/1).

69. The formulation and implementation of national social security strategies and plans of action should respect, *inter alia*, the principles of non-discrimination, gender equality and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to social security should be an integral part of any policy, programme or strategy concerning social security.

70. The national social security strategy and plan of action and its implementation should also be based on the principles of accountability and transparency. The independence of the judiciary and good governance are also essential to the effective implementation of all human rights.

71. In order to create a favourable climate for the realization of the right to social security, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider its importance in pursuing their activities.

72. States parties may find it advantageous to adopt framework legislation to implement the right to social security. Such legislation might include: (a) targets or goals to be attained and the time frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, the private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.

### **B. Decentralization and the right to social security**

73. Where responsibility for the implementation of the right to social security has been delegated to regional or local authorities or is under the constitutional authority of a federal body, the State party retains the obligation to comply with the Covenant, and therefore should ensure that these regional or local authorities effectively monitor the necessary social security services and facilities, as well as the effective implementation of the system. The States parties must further ensure that such authorities do not deny access to benefits and services on a discriminatory basis, whether directly or indirectly.

### **C. Monitoring, indicators and benchmarks**

74. States parties are obliged to monitor effectively the realization of the right to social security and should establish the necessary mechanisms or institutions for such a purpose. In monitoring progress towards the realization of the right to social security, States parties should identify the factors and difficulties affecting implementation of their obligations.

75. To assist the monitoring process, right to social security indicators should be identified in national strategies or plans of action in order that the State party's obligations under article 9 can be monitored at the national and international levels. Indicators should address the different elements of social security (such as adequacy, coverage of social risks and contingencies, affordability and accessibility), be disaggregated on the prohibited grounds of discrimination, and cover all persons residing in the territorial jurisdiction of the State party or under its control. States parties may obtain guidance on appropriate indicators from the ongoing work of the International Labour Organization (ILO), World Health Organization (WHO) and International Social Security Association (ISSA).

76. Having identified appropriate indicators for the right to social security, States parties are invited to set appropriate national benchmarks. During the periodic reporting procedure, the Committee will engage in a process of “scoping” with States parties. Scoping involves the joint consideration by States parties and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the States parties will use these national benchmarks to help monitor their implementation of the right to social security. Thereafter, in the subsequent reporting process, States parties and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered.<sup>44</sup> When setting benchmarks and preparing their reports, States parties should utilize the extensive information and advisory services of the United Nations specialized agencies and programmes.

#### **D. Remedies and accountability**

77. Any persons or groups who have experienced violations of their right to social security should have access to effective judicial or other appropriate remedies at both national and international levels.<sup>45</sup> All victims of violations of the right to social security should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudspersons, human rights commissions, and similar national human rights institutions should be permitted to address violations of the right. Legal assistance for obtaining remedies should be provided within maximum available resources.

78. Before any action is carried out by the State party, or by any other third party, that interferes with the right of an individual to social security the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and include: (a) an opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies. Where such action is based on the ability of a person to contribute to a social security scheme, their capacity to pay must be taken into account. Under no circumstances should an individual be deprived of a benefit on discriminatory grounds or of the minimum essential level of benefits as defined in paragraph 59(a).

79. The incorporation in the domestic legal order of international instruments recognizing the right to social security can significantly enhance the scope and effectiveness of remedial measures and should be encouraged. Incorporation enables courts to adjudicate violations of the right to social security by direct reference to the Covenant.

80. Judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to social security in the exercise of their functions.

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<sup>44</sup> See general comment No.14 (2000) on the right to the highest attainable standard of health (art. 12), para. 58.

<sup>45</sup> See general comment No. 9 (1998) on the domestic application of the Covenant, paragraph 4.

81. States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society, with a view to assisting disadvantaged and marginalized individuals and groups in the realization of their right to social security.

## **VI. OBLIGATIONS OF ACTORS OTHER THAN STATES**

82. The United Nations specialized agencies and other international organizations concerned with social security, such as ILO, WHO, the United Nations Food and Agriculture Organization, the United Nations Children's Fund, the United Nations Human Settlements Programme, the United Nations Development Programme and ISSA, as well as international organizations concerned with trade such as the World Trade Organization, should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to social security.

83. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the right to social security in their lending policies, credit agreements, structural adjustment programmes and similar projects,<sup>46</sup> so that the enjoyment of the right to social security, particularly by disadvantaged and marginalized individuals and groups, is promoted and not compromised.

84. When examining the reports of States parties and their ability to meet the obligations to realize the right to social security, the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights law and principles in the programmes and policies of international organizations will greatly facilitate the implementation of the right to social security.

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<sup>46</sup> See general comment No. 2 (1990) on international technical assistance measures (art. 22 of the Covenant).